



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Orbital Technologies Corporation

File: B-281453; B-281453.2; B-281453.3

Date: February 17, 1999

S. Gregg Kunzi, Esq., and Thomas L. McGovern III, Esq., Hogan & Hartson; and David F. Grams, Esq., David F. Grams & Associates, for the protester. John E. Lariccia, Esq., Department of the Air Force, for the agency. Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of technical proposals submitted in response to solicitation for research and development support services is denied where the protest evidences the protester's mere disagreement with the results of the evaluation and there is no basis on which to find that the evaluation was unreasonable.
2. Allegation that agency conducted an unreasonable evaluation of past performance is denied where the record shows that the agency evaluation was proper and in accordance with the solicitation's stated evaluation factors.
3. Protester's arguments that the cost realism adjustments made to the awardee's proposed labor costs were improper are denied where the record shows that the agency had a reasonable basis for its cost evaluation.

DECISION

Orbital Technologies Corporation protests the award of a contract to ERC, Inc. under request for proposals (RFP) No. F04611-98-R-0025, issued by the Department of the Air Force, as a total small business set-aside, for research in propulsion sciences (RPS) at Edwards Air Force Base, California.¹ The protester argues that the agency's evaluation of proposals and selection decision were unreasonable or inconsistent with the solicitation.

¹This acquisition was conducted under the test case program for the proposed draft Air Force Federal Acquisition Regulation Supplement (AFFARS) § 5315.1, entitled "Source Selection Processes and Techniques," dated November 21, 1997, and the draft AF Source Selection Procedures, dated November 14, 1997 (both hereinafter referred to as Draft AFFARS). RFP § M-2.

We deny the protests.

A draft RFP, consisting of a statement of work (SOW) and sections L and M, was issued on March 17, 1998 to potential offerors. The draft RFP advised that a reference library had been established by the agency to help prospective offerors prepare their proposals and that site observations would be provided, and solicited industry comments. The final RFP, issued on July 21, provided for the award of a multi-year (9-year) cost-plus-fixed-fee contract to provide RPS services to support the Air Force Research Laboratory Propulsion Directorate in the area of space and missile rocket propulsion technologies. RFP §§ L-I, L-II, M.

As amended, the RFP provided for award on a best value basis and informed offerors that the non-cost factors combined were more important than cost. The following evaluation factors and subfactors, listed in descending order of importance, were identified:

1. Mission Capability
 - a. Employee retention/attraction
 - b. Communications/coordination
 - c. Value added cost reduction processes
 - d. Program management
 - e. Scenario
2. Proposal Risk
3. Price/Cost
4. Past Performance

RFP § M-3.

Mission capability and proposal risk factors were of equal importance and of greater importance than the past performance and cost factors. The cost factor was of greater importance than past performance and all three non-cost factors when combined were significantly more important than cost; however, cost was considered a substantial factor in award. Id.

Detailed instructions were provided for the preparation of technical and cost proposals. RFP § L-II. The RFP provided for a cost realism analysis and authorized the government to adjust offerors' proposed costs to reflect the government's estimate of the most probable cost (MPC) of performance. The cost realism analysis would consider whether the costs proposed reflected the offeror's understanding of the requirement and were realistic in relation to the services to be provided. RFP § M-3(e). Offerors were required to provide a detailed breakdown of costs, including labor rates, labor escalation rates, indirect costs, and personnel relocation costs; in computing their proposed labor costs, offerors were directed to use the RFP's estimated labor hours. RFP § L-II, at 12-15.

Nine firms, including Orbital and ERC, submitted offers by the amended closing date for receipt of proposals. As relevant here, Orbital's total proposed costs were [deleted] and ERC's were \$35.1 million. Proposals were evaluated under the mission capability subfactors using a color/adjectival system to reflect how well the offeror's proposal met the specified performance or capability requirements.² Proposal risk was evaluated to assess the risks associated with the offeror's proposed approach, weakness in the proposed approach, and weaknesses in the proposal itself; the risk ratings assigned were high, moderate, or low. Performance risk was evaluated as a measure of the government's confidence in the offeror's ability to successfully complete the proposed effort based on the offeror's relevant present and past performance history. RFP § M-3. Proposals were also evaluated for cost realism and downward adjustments were made to ERC's and Orbital's proposed costs. In performing the cost realism evaluation, the contract negotiator reviewed the firms' proposals and obtained rate verification, and other cost information from the Defense Contract Audit Agency (DCAA).

The results of the evaluation of initial offers from Orbital and ERC were as follows:

FACTORS	ORBITAL	ERC
Mission Capability		
a. Employee retention Proposal risk Past Performance	[deleted] [deleted] [deleted]	Blue Low Great Confidence
b. Communications/Coord. Proposal risk Past Performance	[deleted] [deleted] [deleted]	Blue Low Great Confidence
c. Value added cost reduction processes Proposal risk Past Performance	[deleted] [deleted] [deleted]	Blue Low Confidence
d. Program Mgmt. Proposal risk Past performance	[deleted] [deleted] [deleted]	Green Low Confidence
e. Scenario Proposal risk	[deleted] [deleted]	Yellow Low

²The color/adjectival ratings are: (1) blue/excellent, reflecting that the offer has exceptional merit and substantially exceeded the solicitation requirements; (2) green/good, the offer has merit and exceeded the solicitation requirements; (3) yellow/satisfactory, the offer met minimum solicitation requirements; and (4) red/unsatisfactory, the offer does not meet one or more of the solicitation requirements. Proposals assigned a "red" rating would not be considered for award. Draft AFFARS § 5315.305.

Price/Cost (in millions)		
Proposed Cost	[deleted]	\$ 35.1
MPC	[deleted]	[deleted]

Source Selection Authority Decision Briefing Report, Oct. 13, 1998, at 24-35.

The source selection evaluation team summarized its evaluation findings in a decision briefing report for the source selection authority (SSA), that detailed the strengths, weaknesses, and risks presented by each offeror's proposal. The SSA reviewed the evaluation findings and concluded that ERC's proposal represented the best value to the government, given the qualitative differences among the offerors' approaches.³

In specifically comparing ERC's proposal to Orbital's, the SSA stated:

While I find both ERC and [Orbital] to have exceptional merit that substantially exceeds capability requirements in employee retention/attraction and value added cost reduction processes, as demonstrated by their strengths, I find ERC's proposal superior to [Orbital] in communication/coordination. ERC has clearly demonstrated their ability to quickly, effectively and efficiently communicate and coordinate through their team initiative to explore new communication methods/avenues, including numerous automated/diverse communication methods, which will enhance the ability of researchers to conduct state-of-the-art research. Furthermore, ERC has an exceptional Contract Performance Management/Measurement System and understanding of the required level and type of communications necessary to successfully perform the RPS effort. I find ERC's delegation of authority to the area managers for the quick reallocation of resources and their joint Government/Contractor/On-site Contractor weekly meetings of particular benefit to RPS. Although [Orbital's] communication/coordination is good and has merit which exceeds capability through numerous diverse communication methods, daily interactions with Government and other on-site contractors with an in-depth understanding of the Air Force Research Laboratory (AFRL)

³Federal Acquisition Regulation § 52.215-1(f) (Oct. 10, 1997), incorporated in the RFP, informed offerors that the agency might award a contract without discussions. RFP § L-I.

environment, it is my assessment that ERC's approach to communication/coordination is superior to that of [Orbital].

Source Selection Decision, Oct. 13, 1998, at 1-2.

In addition, the SSA found that ERC "has [deleted] price/cost, which I find affordable for successful performance" of the solicitation requirements and he considered "the [deleted] difference between the lower most probable cost (MPC) and ERC's proposed price/cost insignificant and, should the MPC be realized, of even greater affordability to the RPS effort." Id. at 2. Following this determination, a contract was awarded to ERC. After receiving notice of the award and a debriefing, Orbital filed these protests. The agency has stayed performance of the contract pending our resolution of the protests.

EVALUATION OF PROPOSALS

Orbital argues that the agency failed to follow the evaluation scheme in its evaluation of the proposals.⁴ For example, Orbital protests that it was unreasonable for the agency to assign [deleted] high rating, blue/excellent with low proposal risk, to [deleted] the ERC proposal under the employee retention/attraction subfactor because [deleted] the ERC proposal included no express employment commitments or resumes from the incumbent employees.⁵ Since ERC merely stated its intention to hire the incumbent personnel if the firm was awarded the contract, Orbital maintains that the ERC proposal should have been rated lower [deleted] and assigned a higher proposal risk rating.

Where an evaluation is challenged, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. Advanced Tech.

⁴Orbital identifies a number of examples of unreasonable evaluation ratings and other flaws in the evaluation of proposals. We have examined them all and find that none has any substantive merit. This decision will address only the more significant allegations.

⁵The research and development support services had been provided to the Air Force by Raytheon, a large business. When the agency decided to set aside the procurement for small business, the Raytheon research employees who wanted to continue working at the AFB Rocket Propulsion Laboratory contacted prospective offerors and obtained a variety of information from each offeror, including information on wages and fringe benefits. Thereafter, the Raytheon employees decided to submit resumes and give firm employment commitments to only five offerors. Orbital was one of these five offerors; ERC was not.

and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3. The protester's mere disagreement with the agency's judgment does not itself render the evaluation unreasonable. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 3. We find the evaluation here reasonable and consistent with the solicitation and the stated evaluation factors.

The RFP at issue here provided that the agency would evaluate proposals under the employee retention/attraction subfactor in relation to each offeror's demonstrated approach to effectively attract, retain, and motivate its proposed research personnel. This requirement is met when an offeror's proposal contains specific information regarding employee benefit packages and other forms of compensation, and demonstrates the offeror's management practices and resources in providing an environment that promotes effective and efficient pursuit of research. RFP § M-3(c)(1). The RFP did not preclude proposing prospective incumbent hires nor provide that an offeror proposing firm commitments and resumes from incumbent employees would be given a higher rating for evaluation purposes than an offeror whose proposal did not include similar employment commitments. Indeed, as the protester points out, the agency, in question 21 of the preproposal questions and answers, specifically recognized that proposals that did not include express employment commitments or resumes from the incumbent staff, would be "considered responsive." Air Force Letter to Potential Offerors, July 30, 1998, at sixth unnumbered page.⁶

Since the RFP did not require commitments from incumbent personnel, we see no basis to conclude that the agency was required to downgrade ERC's proposal because it did not obtain employment commitments or resumes from the incumbent staff. In our view, the agency reasonably could conclude, based on ERC's presentation--including its proposal to hire the incumbent staff or other senior non-incumbent research staff who possess the experience and qualifications required by the solicitation to perform the contract services--that ERC's presentation warranted a "blue" rating. Indeed, the record shows that the ERC proposal was evaluated as proposing a highly competitive employee benefit package that included profit sharing, health insurance reimbursement option, and transfer of seniority for benefit purposes; and as demonstrating an excellent history of retaining employees on

⁶ Question 21: Would a proposal that bids incumbents as key personnel without personal commitments from the incumbents or the inclusion of their resumes in the proposal be considered responsive . . . under Subfactor D?

Response 21: Yes. Reference page L-10 of the RFP, section 4.2.4, Subfactor D: Program Management, paragraph d., "If you propose a key position for which you have not, or cannot at this time, identify a specific employee, state the qualifications for the position and the recruitment approach you will use to fill it."

contract changeover which, in the evaluators' judgment, indicated a strong likelihood that ERC could attract and retain research personnel for this RPS effort. Further, ERC was evaluated as proposing an outstanding process for creating an environment to motivate researchers in their pursuit of research by providing a formula for sharing royalties with the inventor and the research team. The evaluators favorably viewed ERC's proposal of a local purchase authority to provide the research personnel with material and equipment in a timely and efficient manner. The evaluators also considered the outstanding qualifications and experience of ERC's chief executive officer as indicative of the firm's ability to attract and retain world-class researchers.

We also note that ERC included in its proposal a copy of an e-mail message from the chairman of the Raytheon employee committee (who was also the program manager under the Raytheon contract). [deleted]

The protester insists that the best indicator of ERC's inability to attract and retain world-class researchers is the fact that ERC was not one of the five offerors who obtained commitments and resumes from the Raytheon employees, and it disagrees with the evaluators' judgment that ERC's proposed employee benefits and compensation package was highly competitive to attract and retain world-class researchers. As shown above, however, the record establishes the reasonableness of the agency's evaluation under this subfactor. In our view, the fact that the ERC proposal did not include employment commitments or resumes from the Raytheon employees does not render improper the agency's evaluation findings, given that employment commitments or resumes were not required.⁷ Nor does the protester's disagreement with the evaluators' conclusion that the ERC benefits and compensation package together with the firm's demonstrated employee retention and royalty sharing plan reflected an exceptional approach to attract, retain and motivate world-class research personnel render the evaluation unreasonable.

Likewise, the record does not support Orbital's related argument that ERC's proposal should have been assigned either a moderate or high proposal risk rating under this subfactor simply because ERC did not obtain incumbent employee commitments. As discussed previously, there was no requirement that an offeror obtain letters of commitment and the evaluators found that ERC's approach demonstrated an understanding of the solicitation requirements and contained specific information as to its ability to attract and retain world-class research personnel and we see no basis to conclude that the agency's low proposal risk rating assigned to the ERC proposal was not warranted.

⁷The protester had alleged that either ERC had misrepresented in its proposal that the firm had received commitments from Raytheon personnel when in fact it had not, or the agency improperly rated the ERC proposal blue/excellent because ERC had not obtained letters of commitments from the incumbent staff. [deleted]

Orbital next complains that under the second most important subfactor, communications/coordination, the agency's rating of the ERC proposal as blue/exceptional with low proposal risk was undeserved. The protester asserts that since ERC was not one of the five offerors to whom the Raytheon employees "provided resumes and other information (including information regarding communications at the site), ERC simply had no institutional knowledge of how government personnel, contractor personnel, and other on-site contractors communicated and coordinated with each other in practice." Protester's Comments, Dec. 23, 1998, at 13.

The RFP stated that this subfactor would be evaluated by assessing offerors' "ability to effectively communicate and coordinate management activities to all team members including government personnel, contractor personnel, and other on-site contractors within a team environment." RFP § M-3(c)(2). Offerors were instructed to describe in their proposal how they would implement internal communication between the technical areas within the organization as well as communication with the research community. In addition, offerors were to demonstrate their approach to coordinating key activities. *Id.*; § L-II.4.2.2.

From our review of the record, ERC addressed each of these requirements in detail, and the agency determined that ERC's proposal provided a detailed integration plan for effective communication and coordination. For instance, the evaluators favorably considered ERC's proposal to initially adopt the current communication techniques and to then institute a team initiative to explore new communication avenues. They believed that ERC's approach would be nondisruptive to current operations and would present an opportunity for the government personnel to be directly involved in any subsequent communication improvements. The evaluators also noted the sound communication methods proposed by ERC; the delegation of authority to ERC's area manager to coordinate and allocate resources; and its exceptional understanding of the required level and types of communication. The evaluators concluded that under this subfactor, the ERC proposal warranted a rating of blue/excellent with low proposal risk. The record supports the agency's evaluation ratings. Although Orbital argues that the ERC proposal could not exceed the solicitation requirements because the firm did not obtain inside information from the incumbent employees, no such inside knowledge was either required or necessary. As previously stated, at least 5 months prior to the receipt of initial proposals, the agency provided on-site observations for all prospective offerors which included meetings with the Raytheon employees and agency personnel and access to an extensive reference library that included project publications, the existing contract with all modifications, and historical information for materials and supplies. Thus, the agency provided ample opportunity for prospective offerors to obtain the "institutional knowledge" necessary to prepare their proposals. Orbital's allegations provide no basis to object to the agency's evaluation in this regard.

In a similar vein, Orbital argues that the agency erred in evaluating ERC's proposal as green/good with low proposal risk under the program management subfactor of the mission capability factor. Based on our review of the record, we believe the evaluation in this area was reasonable. Under this subfactor, offerors were required to demonstrate that their on-site, dedicated program manager has the experience and capabilities to understand the technologies identified in the SOW. RFP, §§ L.4.2.4, M-3(c)(4). Orbital takes issue with the fact that [deleted] ERC's [deleted] rated green/good with low proposal risk although ERC, unlike Orbital which had the commitment of the Raytheon program manager, had not furnished a personal commitment from the incumbent program manager nor from an otherwise qualified program manager with the requisite experience and capability.⁸ The record shows that ERC's proposal was rated green/good because the evaluators reasonably believed that ERC would be able to hire the current Raytheon program manager to fill this key position. While the Raytheon program manager had provided his written employment commitment to Orbital and four other offerors, as discussed above, he had expressed an interest in working for ERC should that firm be the successful offeror. Furthermore, this subfactor asked offerors to provide additional information, including an organizational chart, lines of authority, chain of command, and the program manager's ability to transition resources and personnel into the program, see RFP § L-II.4.2.4, and the record indicates that the agency concluded that ERC's approach to meeting the program management requirements was good. For instance, the evaluators found ERC's proposed on-site management and organizational approach would promote rapid response to agency needs, and that its transition plan--that included establishing a transition team, recruiting off-site during after-work hours, and detailed orientation briefings--was well thought out. Contrary to Orbital's contentions, the agency's evaluation of ERC's proposal as green/good under this subfactor was reasonable.

In any case, Orbital's argument overstates the importance of the color/adjectival ratings in relation to the source selection process. While adjectival ratings may be useful as guides to intelligent decision-making, they are not binding on the source selection official, who has discretion to determine the weight to accord such scores in making an award decision. Porter/Novelli, B-258831, Feb. 21, 1995, 95-1 CPD ¶ 101 at 4-5. Of concern to our Office is whether the record as a whole supports the reasonableness of the evaluation results and source selection decision. PCL/Am. Bridge, B-254511.2, Feb. 24, 1994, 94-1 CPD ¶ 142 at 5-6. Here, the evaluation record shows that, consistent with the terms of the final RFP, the SSA reasonably decided not to weigh Orbital's proposal more heavily than ERC's simply because it offered firm commitments and resumes from the incumbent employees. Instead, as

⁸As relevant here, the ERC proposal stated that:

[deleted]

discussed previously, the SSA (and evaluators) examined how well the ERC proposal met the evaluation factors and subfactors. The SSA ultimately concluded that ERC's proposal offered the better overall value and provided greater confidence of successful performance because of its relative superiority and higher performance risk assessment under the communication/coordination subfactors, the second most important subfactor of the mission capability factor. This determination is supported by the evaluation record.

PAST PERFORMANCE

The RFP provided that the agency would evaluate the past performance of offerors who demonstrated that they had performed at least four relevant contracts or subcontracts of a similar size and nature within the past 5 years. In addition, offerors were required to explain what aspects of these four contracts/subcontracts they considered to be relevant to the proposed effort. RFP §§ L-II.7.0, M-3(f). To determine relevance, the agency would consider such things as product similarity, product complexity, contract type, program phase, contract environment, division of company proposing and subcontractor interaction. Draft AFFARS 5315.305 (a)(2)(iii).

Orbital challenges the Air Force's past performance review, asserting that the agency (1) unreasonably concluded that two of the four contracts identified in its past performance proposal were not relevant to the proposed effort and were not further considered, and (2) improperly considered a NASA contract awarded to ERC which was too remote in time to be relevant. Protester's Comments, January 15, 1999, at 5-7. Where a solicitation requires the evaluation of offerors' past performance, the agency has discretion to determine the scope of the offerors' performance histories to be considered, provided all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the solicitation. Wind Gap Knitwear, Inc., B-261045, June 20, 1995, 95-2 CPD ¶ 124 at 3; Federal Envtl. Servs., Inc., B-250135.4, May 24, 1993, 93-1 CPD ¶ 398 at 12.

Orbital claims that the Air Force improperly determined that Orbital's contract [deleted] was not relevant because it was more production oriented than the RPS effort. Likewise, Orbital's [deleted] was considered more operational in nature than the research and development effort required under this solicitation. Protester's Comments, December 23, 1998, at 20-23.

We have no basis to disagree with the evaluators' judgment that these two Orbital contracts were not relevant. The record indicates that relevance was judged on the basis of contract type, period of performance, contract value, and type of effort using offeror-provided documentation or information from other sources. With regard to Orbital's [deleted] The evaluators concluded, based on the protester's explanation as to the relevance of this contract, that the contract involved

production and hardware development, rather than basic and applied research, or other research related disciplines that could be applied to this RPS program.

As to [deleted] the record further shows that the evaluators deemed the information presented in Orbital's proposal for this contract bore little correlation to the basic and applied research activities required under the RPS contract. [deleted] We think the agency could reasonably decide this contract was not relevant to a contract for basic and applied research activities. The fact that Orbital characterizes its performance under these two prior contracts as very successful and states that the contract effort performed under both contracts is very similar to the type of effort required by this RFP does not, in our view, make the agency's conclusion here unreasonable.

With regard to ERC, Orbital argues that the contracts selected as relevant and evaluated under the past performance factor impermissibly included NASA Contract No. NAS8-97278 (Contract 97278) which was awarded in April 1993, more than 5 years prior to the date the instant solicitation was issued. We find no merit to this allegation. While ERC had identified the period of performance for this contract as April 1993 through September 30, 1998, the narrative discussion makes it clear that it is Phase III of Contract 97278, a fixed-price task order, which was listed as one of ERC's four relevant contracts. ERC Proposal, Vol. V, at V-5-8. The past performance survey responses received from NASA contract officials indicate that the responses relate to a task order which was issued in June 1997; this task order was clearly within the past 5 years. In short, this record provides us no basis upon which to object to the Air Force's evaluation of proposals under the past performance factor.

COST EVALUATION

The protester alleges that the agency improperly based the downward adjustment of ERC's proposed labor costs on the incumbent's current rates rather than accept the higher rates proposed by ERC. Orbital notes in this regard that ERC proposed to hire the incumbent Raytheon staff and proposed to pay them at labor rates equal to ERC's corporate salary rates for the [deleted] area, increased by approximately 8 percent to reflect the higher prevailing rates in the Edwards AFB area. Since nothing in the ERC proposal indicated that the firm planned to pay its employees the incumbent rates, the protester insists that the agency's downward adjustment to the exact level of those incumbent rates was unreasonable. Protester's Comments on Second Supplemental Agency Report, January 15, 1999, at 2-4.

We need not address the propriety of the agency's decision to adjust downward ERC's proposed labor rates. As discussed above, the SSA found ERC's proposal to offer the best overall value to the government. In our view, since even ERC's

proposed (that is, unadjusted) cost is lower than [deleted] we do not see that ERC's MPC adjustment had any impact on the award decision. In fact, as noted above, the SSA specifically considered ERC "affordable" even at its proposed cost. In these circumstances, we do not see how Orbital was prejudiced by the agency's cost evaluation. See Conwal, Inc., B-279260, B-279260.2, May 26, 1998, 98-1 CPD ¶ 153 at 3.

The protests are denied.

Comptroller General
of the United States